Department of
CRIMINAL JUSTICE TRAINING

KENTUCKY JUSTICE AND PUBLIC SAFETY CABINET

2013

KENTUCKY LEADERSHIP INSTITUTE

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LEGAL ISSUES

PRE-CLASS ASSIGNMENT

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Commissioner

KRS 600.020 Definitions for KRS Chapters 600 to 645

As used in KRS Chapters 600 to 645, unless the context otherwise requires:

(1) "**Abused or neglected child**" means a child whose health or welfare is harmed or threatened with harm when:

(a) His or her parent, guardian, person in a position of authority or special trust, as defined in KRS 532.045, or other person exercising custodial control or supervision of the child:

1. Inflicts or allows to be inflicted upon the child physical or emotional injury as defined in this section by other than accidental means;
2. Creates or allows to be created a risk of physical or emotional injury as defined in this section to the child by other than accidental means;
3. Engages in a pattern of conduct that renders the parent incapable of caring for the immediate and ongoing needs of the child including, but not limited to, parental incapacity due to alcohol and other drug abuse as defined in KRS 222.005(12);
4. Continuously or repeatedly fails or refuses to provide essential parental care and protection for the child, considering the age of the child;
5. Commits or allows to be committed an act of sexual abuse, sexual exploitation, or prostitution upon the child;
6. Creates or allows to be created a risk that an act of sexual abuse, sexual exploitation, or prostitution will be committed upon the child;
7. Abandons or exploits the child;
8. Does not provide the child with adequate care, supervision, food, clothing, shelter, and education or medical care necessary for the child's well-being. A parent or other person exercising custodial control or supervision of the child legitimately practicing the person's religious beliefs shall not be considered a negligent parent solely because of failure to provide specified medical treatment for a child for that reason alone. This exception shall not preclude a court from ordering necessary medical services for a child; or
9. Fails to make sufficient progress toward identified goals as set forth in the court-approved case plan to allow for the safe return of the child to the parent that results in the child remaining committed to the cabinet and remaining in foster care for fifteen (15) of the most recent twenty-two (22) months; or

(b) A person twenty-one (21) years of age or older commits or allows to be committed an act of sexual abuse, sexual exploitation, or prostitution upon a child less than sixteen (16) years of age.

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(28)"**Habitual truant**" means any child who has been found by the court to have been reported as a truant as defined in KRS 159.150 two (2) or more times during a one (1) year period;

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KRS 610.190 Arrest laws applicable to child taken into custody – Applicability of bail laws – Custody by person other than peace officer

(1) The law relating to the persons by whom and the circumstances under which a person may be arrested for a public offense shall be applicable to children, but the taking of a child into custody under such law shall not be termed an arrest until the court has made the decision to try the child in Circuit or District Court as an adult. The law relating to bail shall not be applicable to children detained in accordance with this chapter unless the child is subject to being tried in Circuit or District Court as an adult.

(2) When a child is taken into custody by a person other than a peace officer, such person shall as soon as possible place the child in the custody of a peace officer.

KRS 610.200 Duties of peace officer

(1) When a peace officer has ***take***n or received a child ***into custody*** on a charge of committing an offense, the officer shall immediately inform the child of his constitutional rights and afford him the protections required thereunder, notify the parent, or if the child is committed, the Department of Juvenile Justice or the cabinet, as appropriate, and if the parent is not available, then a relative, guardian, ***person exercising custodial control or supervision*** of the child, that the child has been taken into custody, give an account of specific charges against the child, including the specific statute alleged to have been violated, and the reasons for taking the child into custody.

(2) Unless the child is subject to trial as an adult or unless the nature of the offense or other circumstances are such as to indicate the necessity of retaining the child in custody, the officer shall release the child to the custody of his parent or if the child is committed, the Department of Juvenile Justice or the cabinet, as appropriate; or if the parent is not available, then a relative, guardian, person exercising custodial control or supervision or other responsible person or agency approved by the court upon the written promise, signed by such person or agency, to bring the child to the court at a stated time or at such time as the court may order. The written promise, accompanied by a written report by the officer, shall be submitted forthwith to the court or ***court-designated worker*** and shall detail the reasons for having taken custody of the child, the release of the child, the person to whom the child was released, and the reasons for the release.

(3) If the person fails to produce the child as agreed or upon notice from the court, a summons, warrant, or custody order may be issued for the apprehension of the person or of the child, or both.

(4) The release of a child pursuant to this section shall not preclude a peace officer from proceeding with a complaint against a child or any other person.

(5) Unless the child is subject to trial as an adult, if the child is not released, the peace officer shall contact the court-designated worker who may:
   (a) Release the child to his parents;
   (b) Release the child to such other persons or organizations as are authorized by law;
   (c) Release the child to either of the above subject to stated conditions; or
   (d) Except as provided in subsection (6) of this section, authorize the peace officer to retain custody of the child for an additional period not to exceed twelve (12) hours during which the peace officer may transport the child to a ***secure juvenile detention facility***, a ***juvenile holding facility***, or a ***nonsecure facility***. If the child is retained in custody, the court-designated worker shall give notice to the child's parents or person exercising custodial control or supervision of the fact that the child is being retained in custody.

(6) (a) Except as provided in paragraph (b) of this subsection, no child ten (10) years of age or under shall be taken to or placed in a juvenile detention facility.
   (b) Any child ten (10) years of age or under who has been charged with the commission of a capital offense or with an offense designated as a Class A or Class B felony may be taken to or placed in a secure juvenile detention facility or youth alternative center when there is no available less restrictive alternative.

KRS 610.220 Permitted purposes for holding child in custody – Time limitation – Extension - Separation from adult prisoners – Prohibition against attaching child to stationary object

(1) Except as otherwise provided by statute, if an officer takes or receives a child into custody, the child may be held at a police station, ***secure juvenile detention facility***, ***juvenile holding facility***, ***intermittent holding facility***, ***youth alternative center***, a ***nonsecure facility***, or, as necessary, in a ***hospital*** or clinic for the following purposes:
   (a) Identification and booking;
   (b) Attempting to notify the parents or person exercising custodial control or supervision of the child, a relative, guardian, or other responsible person;
   (c) Photographing;
   (d) Fingerprinting;

(e) Physical examinations, including examinations for evidence;
(f) Evidence collection, including scientific tests;
(g) Records checks;
(h) Determining whether the child is subject to trial as an adult; and
(i) Other inquiries of a preliminary nature.

(2) A child may be held in custody pursuant to this section for a period of time not to exceed two (2) hours, unless an extension of time is granted. Permission for an extension of time may be granted by the court, trial commissioner, or ***court-designated worker*** pursuant to KRS 610.200(5)(d) and the child may be retained in custody for up to an additional ten (10) hours at a facility of the type listed in subsection (1) of this section except for an intermittent holding facility for the period of retention.

(3) Any child held in custody pursuant to this section shall be sight and sound separated from any adult prisoners held in secure custody at the same location, and shall not be handcuffed to or otherwise securely attached to any stationary object.

KRS 610.265 Detention of children in specified facilities – Time frame for holding detention hearing – Release of child required if hearing not held as specified

(1) Any child who is alleged to be a status offender or who is accused of being in contempt of court on an underlying finding that the child is a status offender may be detained in a nonsecure facility, a secure juvenile detention facility, or a juvenile holding facility for a period of time not to exceed twenty-four (24) hours, exclusive of weekends and holidays, pending a detention hearing. Any child who is accused of committing a public offense or of being in contempt of court on an underlying public offense may be detained in a secure juvenile detention facility or juvenile holding facility for a period of time not to exceed forty-eight (48) hours, exclusive of weekends and holidays or, if neither is reasonably available, an intermittent holding facility, for a period of time not to exceed twenty-four (24) hours, exclusive of weekends and holidays pending a detention hearing.

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KRS 620.030 Duty to report dependency, neglect or abuse – Husband-wife and professional-client/patient privileges not grounds for refusal to report – Exceptions - Penalties

Penalty: KRS 620.990(1)

(1) Any person who knows or has reasonable cause to believe that a child is ***dependent, neglected or abused*** shall immediately cause an oral or written report to be made to a local law enforcement agency or the Kentucky State Police; the cabinet or its designated representative; the Commonwealth's attorney or the county attorney; by telephone or otherwise. Any supervisor who receives from an employee a report of suspected dependency, neglect or abuse shall promptly make a report to the proper authorities for investigation. If the cabinet receives a report of abuse or neglect allegedly committed by a person other than a parent, guardian or person exercising custodial control or supervision, the cabinet shall refer the matter to the Commonwealth's attorney or the county attorney and the local law enforcement agency or the Kentucky State Police. Nothing in this section shall relieve individuals of their obligations to report.

(2) Any person, including but not limited to a physician, osteopathic physician, nurse, teacher, school personnel, social worker, coroner, medical examiner, child-caring personnel, resident, intern, chiropractor, dentist, optometrist, emergency medical technician, paramedic, health professional, mental health professional, peace officer or any organization or agency for any of the above, who knows or has reasonable cause to believe that a child is dependent, neglected or abused, regardless of whether the person believed to have caused the dependency, neglect or abuse is a parent, guardian, person exercising custodial control or supervision or another person, or who has attended such child as a part of his professional duties shall, if requested, in addition to the report required in subsection (1) of this section, file with the local law enforcement agency or the Kentucky State Police or the Commonwealth's or county attorney, the cabinet or its designated representative

within forty-eight (48) hours of the original report a written report containing:

(a) The names and addresses of the child and his parents or other persons exercising custodial control or supervision;
(b) The child's age;
(c) The nature and extent of the child's alleged dependency, neglect or abuse (including any previous charges of dependency, neglect or abuse) to this child or his siblings;
(d) The name and address of the person allegedly responsible for the abuse or neglect; and
(e) Any other information that the person making the report believes may be helpful in the furtherance of the purpose of this section.

(3) Neither the husband-wife nor any professional-client/patient privilege, except the attorney-client and clergy-penitent privilege, shall be a ground for refusing to report under this section or for excluding evidence regarding a dependent, neglected, or abused child or the cause thereof, in any judicial proceedings resulting from a report pursuant to this section. This subsection shall also apply in any criminal proceeding in District or Circuit Court regarding a dependent, neglected, or abused child.

(4) The cabinet upon request shall receive from any agency of the state or any other agency, institution or facility providing services to the child or his family, such cooperation, assistance and information as will enable the cabinet to fulfill its responsibilities under KRS 620.030, 620.040, and 620.050.

(5) Any person who intentionally violates the provisions of this section shall be guilty of a:
(a) Class B misdemeanor for the first offense;
(b) Class A misdemeanor for the second offense; and
(c) Class D felony for each subsequent offense.

KRS 620.040 Duties of prosecutor, police, and cabinet – Prohibition as to school personnel – Multidisciplinary teams

(1) (a) Upon receipt of a report alleging abuse or neglect by a parent, guardian, or person exercising custodial control or supervision, pursuant to KRS 620.030(1) or (2), the recipient of the report shall immediately notify the cabinet or its designated representative, the local law enforcement agency or Kentucky State Police, and the Commonwealth's or county attorney of the receipt of the report unless they are the reporting source.

(b) Based upon the allegation in the report, the cabinet shall immediately make an initial determination as to the risk of harm and immediate safety of the child. Based upon the level of risk determined, the cabinet shall investigate the allegation or accept the report for an assessment of family needs and, if appropriate, may provide or make referral to any community-based services necessary to reduce risk to the child and to provide family support. A report of sexual abuse shall be considered high risk and shall not be referred to any other community agency.

(c) The cabinet shall, within seventy-two (72) hours, exclusive of weekends and holidays, make a written report to the Commonwealth's or county attorney and the local enforcement agency or Kentucky State Police concerning the action that has been taken on the investigation.

(d) If the report alleges abuse or neglect by someone other than a parent, guardian, or person exercising custodial control or supervision, the cabinet shall immediately notify the Commonwealth's or county attorney and the local law enforcement agency or Kentucky State Police.

(2) (a) Upon receipt of a report alleging dependency pursuant to KRS 620.030(1) and (2), the recipient shall immediately notify the cabinet or its designated representative.

(b) Based upon the allegation in the report, the cabinet shall immediately make an initial determination as to the risk of harm and immediate safety of the child. Based upon the level of risk, the cabinet shall investigate the

allegation or accept the report for an assessment of family needs and, if appropriate, may provide or make referral to any community-based services necessary to reduce risk to the child and to provide family support. A report of sexual abuse shall be considered high risk and shall not be referred to any other community agency.

(c) The cabinet need not notify the local law enforcement agency or Kentucky State Police or county attorney or Commonwealth's attorney of reports made under this subsection.

(3) If the cabinet or its designated representative receives a report of abuse by a person other than a parent, guardian, or other person exercising custodial control or supervision of a child, it shall immediately notify the local law enforcement agency or Kentucky State Police and the Commonwealth's or county attorney of the receipt of the report and its contents and they shall investigate the matter. The cabinet or its designated representative shall participate in an investigation of noncustodial physical abuse or neglect at the request of the local law enforcement agency or the Kentucky State Police. The cabinet shall participate in all investigations of reported or suspected sexual abuse of a child.

(4) School personnel or other persons listed in KRS 620.030(2) do not have the authority to conduct internal investigations in lieu of the official investigations outlined in this section.

(5) (a) If, after receiving the report, the law enforcement officer, the cabinet, or its designated representative cannot gain admission to the location of the child, a search warrant shall be requested from, and may be issued by, the judge to the appropriate law enforcement official upon probable cause that the child is dependent, neglected, or abused. If, pursuant to a search under a warrant a child is discovered and appears to be in imminent danger, the child may be removed by the law enforcement officer.

(b) If a child who is in a hospital or under the immediate care of a physician appears to be in imminent danger if he is returned to the persons having custody of him, the physician or hospital administrator may hold the child without court order, provided that a request is made to the court for an emergency custody order at the earliest practicable time, not to exceed seventy-two (72) hours.

(c) Any appropriate law enforcement officer may take a child into protective custody and may hold that child in protective custody without the consent of the parent or other person exercising custodial control or supervision if there exist reasonable grounds for the officer to believe that the child is in danger of imminent death or serious physical injury or is being sexually abused and that the parents or other person exercising custodial control or supervision are unable or unwilling to protect the child. The officer or the person to whom the officer entrusts the child shall, within twelve (12) hours of taking the child into protective custody, request the court to issue an emergency custody order.

(d) When a law enforcement officer, hospital administrator, or physician takes a child into custody without the consent of the parent or other person exercising custodial control or supervision, he or she shall provide written notice to the parent or other person stating the reasons for removal of the child. Failure of the parent or other person to receive notice shall not, by itself, be cause for civil or criminal liability.

(6) To the extent practicable and when in the best interest of a child alleged to have been abused, interviews with the child shall be conducted at a children's advocacy center.

(7) (a) One (1) or more multidisciplinary teams may be established in every county or group of contiguous counties.

(b) Membership of the multidisciplinary team shall include, but shall not be limited to, social service workers employed by the Cabinet for Families and Children and law enforcement officers. Additional team members may include Commonwealth's and county attorneys, children's advocacy

center staff, mental health professionals, medical professionals, victim advocates, educators, and other related professionals, as deemed appropriate.

(c) The multidisciplinary team may review child sexual abuse cases referred by participating professionals, including those in which the alleged perpetrator does not have custodial control or supervision of the child, or is not responsible for the child's welfare. The purpose of the multidisciplinary team shall be to review investigations, assess service delivery, and to facilitate efficient and appropriate disposition of cases through the criminal justice system.

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(f) Multidisciplinary team members and anyone invited by the multidisciplinary team to participate in a meeting shall not divulge case information, including information regarding the identity of the victim or source of the report. Team members and others attending meetings shall sign a confidentiality statement that is consistent with statutory prohibitions on disclosure of this information.

(g) The multidisciplinary team shall, pursuant to KRS 431.600 and 431.660, develop a local protocol consistent with the model protocol issued by the Kentucky Multidisciplinary Commission on Child Sexual Abuse. The local team shall submit the protocol to the commission for review and approval.

(h) The multidisciplinary team review of a case may include information from reports generated by agencies, organizations, or individuals that are responsible for investigation, prosecution, or treatment in the case, KRS 610.320 to KRS 610.340 notwithstanding.

(i) To the extent practicable, multidisciplinary teams shall be staffed by the local children's advocacy center.

KRS 630.030 Circumstances under which child may be taken into custody by peace officer

Under the provisions of this chapter a child may be taken into custody by any peace officer:

(1) Pursuant to an order of the court for failure to appear before the court for a previous status offense; or

(2) If there are reasonable grounds to believe that the child has been an habitual runaway from his parent or person exercising custodial control or supervision of the child.

KRS 630.040 Duties of person taking child into custody

Any person taking a child into custody, with all reasonable speed, shall in this sequence:

(1) Deliver the child suffering from a physical condition or illness which requires prompt medical treatment to a medical facility or physician. Children suspected of having a mental or emotional illness shall be evaluated in accordance with the provisions of KRS Chapter 645;

(2) Contact a court designated worker who shall have the responsibility for determining appropriate placement pursuant to KRS 610.200(5);

(3) If the court designated worker determines that the placements designated in KRS 610.200(5) and subsection (1) of this section have been exhausted or are not appropriate, a child may be delivered to a secure juvenile detention facility, a juvenile holding facility, or a nonsecure setting approved by the Department of Juvenile Justice pending the detention hearing;

(4) When the child has not been released to his parents or person exercising custodial control or supervision, the person taking the child into custody shall make a reasonable effort promptly to give oral notice to the parent or person exercising custodial control or supervision of the child;

(5) In all instances the peace officer taking a child into custody shall provide a written statement to the court designated worker of the reasons for taking the child into custody;

(6) If the child is placed in an emergency shelter or medical facility, during the adjudication and disposition of his case, the court may order his parents to be responsible for the expense of his care; and

(7) The peace officer taking the child into custody shall within three (3) hours of taking a child into custody file a complaint with the court, stating the basis for taking the child into custody and the reason why the child was not released to the parent or other adult exercising custodial control or supervision of the child, relative or other responsible adult, a court designated agency, an emergency shelter or medical facility. Pending further disposition of the case, the court or the court designated worker may release the child to the custody of any responsible adult who can provide adequate care and supervision.

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Selected Case Law Summaries

U.S. v. Fellers
124 S.Ct. 1019 (2004)

FACTS: Police went to Fellers' home with a warrant for his arrest, following an indictment. When they arrived, they asked if they could come in and speak with Fellers. They were let in, and they talked with Fellers for a while without mentioning the arrest warrant. At no time during the conversation at his house was Fellers given his Miranda warnings. The officers deliberately elicited incriminating statements from him before executing the warrant and arresting Fellers. He was subsequently Mirandized at the jail.

ISSUE: Should the suspect have been Mirandized prior to the non-custodial interrogation when he had already been indicted and a warrant issued for his arrest?

HOLDING: Yes.

DISCUSSION: The Court held that a suspect's 6th Amendment rights attached at the start of official proceedings against him. When Fellers was indicted, his 6th Amendment rights attached at that moment related to the offense charged, but no others. To interrogate such a person, even though they are not in custody, an officer must Mirandize them prior to interrogation.

Berghuis (Warden) v. Thompkins
130 S.Ct/ 2250 (2010)

FACTS: A shooting occurred in Southfield (Michigan) on January 10, 2000. Morris died from multiple gunshot wounds; France survived and later testified. Thompkins, the suspect, fled, but was apprehended a year later in Ohio.

Southfield officers traveled to Ohio to question Thompkins, who was "awaiting transfer to Michigan." At the beginning of the interrogation, Officer Helgert provided Thompkins with his Miranda[1] rights, in writing. The officer had Thompkins read the last provision of the warnings out lout to ensure that Thompkins could read and presumably understand English. Helgert read the other four warnings to Thompkins and Thompkins signed the form. There was conflict in the record as to whether Thompkins was asked, or verbally confirmed, that he understood his rights.

During the ensuing 3 hour interrogation, "at no point … did Thompkins say that he wanted to remain silent, that he did not want to talk with the police, or that he wanted an attorney." He was "largely silent," but did occasionally give a limited verbal response, such as yes, no or a comment such as "I don't know." He also refused a peppermint and mentioned that the chair he was sitting on was hard. Toward the end of the interrogation, one of the officers asked Thompkins if he believed in God and Thompkins's eyes "welled up with tears." Thompkins agreed he prayed to God. Officer Helgert then asked him, "Do you pray to God to forgive you for shooting that boy down?" Thompkins responded "yes" and looked away.

[1] Miranda v. Arizona, 384 U.S. 436 (1966).

He refused to give a written confession and the interrogation ended some 15 minutes later.

Thompkins was charged with murder, assault and related firearms offenses. He moved for suppression of his statements, arguing that he had invoked his Fifth Amendment rights and that interrogation should have then ended.[2] The trial court denied the motion.

Thompkins was convicted and appealed. The Michigan appellate courts denied his argument that the statements should have been suppressed, holding that he had "not invoked his right to remain silent." Thompkins filed a petition for habeas corpus in the U.S. District Court, which also rejected his claim, stating that the state court's decision was not "contrary to, or involved an unreasonable application of clearly established federal law."[3] "The District Court reasoned that Thompkins did not invoke his right to remain silent and was not coerced into making statements during the interrogation."

Thompkins appealed to the U.S. Court of Appeals for the Sixth Circuit, which reversed. The Sixth Circuit "acknowledged that a waiver of the right to remain silent need not be express, as it can be 'inferred from the actions and words of the person interrogated.'"[4] However, it's recitation of the facts indicated that it believed that "Thompkins was silent for two hours and forty-five minutes" and that silence offered a "clear and unequivocal message to the officers: Thompkins did not wish to waive his rights." (The Court also ruled in his favor on an unrelated assistance-of-counsel issue.) The Warden (as the respondent in a habeas petition) requested certiorari and the U.S. Supreme Court granted review.

ISSUE: Must a suspect invoke his right to remain silent in an unambiguous and unequivocal manner?

HOLDING: Yes

DISCUSSION: The Court reviewed the history of the Miranda ruling and noted that all of the parties conceded "that the warning given in this case was in full compliance with these requirements." Instead, the dispute in this case "centers on the response – or nonresponse – from the suspect" following the warnings being given. Thompkins argued that he remained silent "for a sufficient period of time so the interrogation should have 'cease[d]' before he made his inculpatory statement."[5] However, the Court noted, in Davis v. U.S., it had "held that a suspect must do so 'unambiguously.'"[6]

The Court continued:

> The court has not yet stated whether an invocation of the right to remain silent can be ambiguous or equivocal, but there is no principled reason to adopt different standards for determining when an accused has invoked the Miranda right to remain silent and the Miranda right to counsel at issue in Davis.

Further, it ruled that "there is good reason to require an accused who wants to invoke his or her right to remain silent to do so unambiguously." Such a requirement avoids forcing law enforcement officers "to make difficult decisions about an accused's unclear intent and face the consequences of suppression 'if they guess wrong.'"[7]

[2] Michigan v. Mosley, 423 U.S. 96 (1975).
[3] 28 U.S.C. §2254(d)(1).
[4] North Carolina v. Butler, 441 U.S. 369 (1979).
[5] Mosley, supra.
[6] 512 U.S. 452 (1994).
[7] See Moran v. Burbine, 475 U.S. 412 (1986).

The Court then considered whether, in fact, Thompkins waived his right to remain silent.

The Court continued:

> The waiver inquiry "has two distinct dimensions": waiver must be "voluntary in the sense that it was the produce of a free and deliberate choice rather than intimidation, coercion, or deception," and "made with a full awareness of both the nature of the right being abandoned and the consequences of the decision to abandon it."[8]

Decisions since Miranda demonstrate "that waivers can be established even absent formal or express statements of waiver that would be expected in, say, a judicial hearing to determine if a guilty plea has been properly entered." The prosecution, as such, "does not need to show that a waiver of Miranda rights was express." Instead, an "implicit waiver" is "sufficient to admit a suspect's statement into evidence."[9] It is to the prosecution to make an adequate showing that the accused understood Miranda rights, as given. Once that is done, however, "an accused's uncoerced statement establishes an implied waiver of the right to remain silent."

Further:

> Although Miranda imposes on the police a rule that is both formalistic and practical when it prevents them from interrogating suspects without first providing them with a Miranda warning, it does not impose a formalistic wavier procedure that a suspect must follow to relinquish those rights.

Miranda rights can be waived through more informal means than a "typical waiver on the record," which generally requires a verbal invocation. The Court found no "contention" on the record that Thompkins did not understand his rights, but instead, found "more than enough evidence in the record" that he did. His response to the officer's final question was a "course of conduct indicating waiver" of the right to remain silent – he could have remained silent or invoked his Miranda rights at that time, or any time earlier, ending the interrogation. The fact that would have been three hours after the warning was given was immaterial and "police are not required to rewarn suspects from time to time." This is further confirmed in that he gave "sporadic answers to questions throughout the interrogation." The Court found no evidence of coercion or threat, as neither, the length of time nor the conditions of the interrogation were not such as would put him in physical or mental distress. Appealing to his religious beliefs (moral and psychological pressures) did not make the interrogation improper.[10]

Thompkins also contended that the police could not question him until they obtained a waiver, but again, the Court noted that Butler foreclosed this line of argument.

The Court stated:

> Interrogation provides the suspect with additional information that can put his or her decision to waive, or not to invoke, into perspective. As questioning commences and then continues, the suspect

[8] Id.

[9] Butler, supra.

[10] Oregon v. Elstad, 470 U.S. 298 (1985).

> has the opportunity to consider the choices he or she faces and to make a more informed decision, either to insist on silence or to cooperate. When the suspect knows that Miranda rights can be invoked at any time, he or she has the opportunity to reassess his or her immediate and long-term interests. Cooperation with the police may result in more favorable treatment for the suspect; the apprehension of accomplices; the prevention of continuing injury and fear; beginning steps towards relief or solace for the victims; and the beginning of the suspect's own return to the law and the social order it seeks to protect.

The Court affirmed that in order for a statement (under interrogation) to be admissible, the accused must have been properly given, and understood, the Miranda warnings. The Court would then look for an express or implied waiver but the Court agreed that officers need not obtain a waiver before commencing an interrogation.

The Court agreed that the statements were admissible and reversed the decision of the Sixth Circuit on the issue. The Court also ruled on an unrelated question with respect to jury instructions, and found no prejudice to Thompkins. The Court remanded the case to the lower court to deny the habeas petition.

Horton v. California
469 U.S. 128 (1990)

FACTS: Officers executed a search warrant at Horton's home. Horton was a suspect in an armed robbery. The robbers were described by the victim as having been armed with a "machine gun" and a stun gun. The warrant failed to list the weapons, but only listed the stolen jewelry. While executing the warrant, the officers found weapons that matched the description of what the victim had said the robbers used. The weapons were seized, even though they were not listed on the warrant.

ISSUE: May evidence or contraband that is seen in "plain view" be seized without a warrant?

HOLDING: Yes, if it meets the test of plain view.

DISCUSSION: The Court held that officers may seize evidence or contraband without a warrant under circumstances it defined as plain view. (1) The officer must lawfully be in the location he is at when he observes the item. (2) The officer must immediately have probable cause to believe it is evidence of a crime. (3) The officer may seize it without a warrant if he has lawful access to the item. Here, the officers were lawfully on the premises pursuant to the search warrant. They immediately had probable cause to believe the weapons they saw were evidence of a crime as they matched the description given by the victim. They had right of access to the weapons because they were in a location where the officers had access due to the search warrant

Hudson v. Michigan
126 S.Ct. 2159 (2006)

FACTS: Officers entered Hudson's dwelling to execute a search warrant. The state of Michigan conceded that the officers had not waited a reasonable amount of time after knocking and announcing before they entered. Michigan argued that the penalty for such a failure should not be suppression of the evidence.

ISSUE: Is the appropriate penalty for failing to properly knock and announce suppression of the evidence when the officers had what was otherwise a valid warrant?

HOLDING: No.

DISCUSSION: The Court strongly reaffirmed that the requirement to knock and announce is a constitutional requirement, and must be fulfilled. However, the Court held that hereafter the remedy for failure to knock and announce would no longer be application of the exclusionary rule. The Court noted that the warrant was supported by probable cause and valid in all respects, and it made little sense to suppress evidence that the police would have been entitled to seize had they waited a few seconds more. Therefore, the remedy for a failure to properly knock and announce will hereafter be limited to civil liability under 42 U.S.C. § 1983.

Chimel v. California
395 U.S. 752 (1969)

FACTS: Officers went to Chimel's home with a warrant for his arrest on charges of theft of old collectible coins. He was arrested in the living room, and the officers then searched the rest of the house and outbuildings without a search warrant. They found various pieces of evidence during the search. Chimel wanted the evidence suppressed.

ISSUE: Is the search of an arrestee's entire house justified incident to his arrest?

HOLDING: No.

DISCUSSION: When an arrest is made, it is reasonable to search his person for any weapons or evidence he may have on him. Likewise, the officer may search the area within the arrestee's immediate control. In most buildings, that will be the entire room in which he is arrested. If he has a weapon hidden in the room he is arrested in, he may be able to access it and attack the officer if he has a brief distraction. The same logic does not apply to the entire structure the arrest takes place in.

Carroll v. U.S.
267 U.S. 132 (1925)

FACTS: Prohibition agents stopped Carroll on the road between Detroit and Grand Rapids, Michigan. They had probable cause to believe Carroll was smuggling illegal liquor in his vehicle. They did not have a warrant. Taking a knife, they cut his back seat apart, and discovered 68 bottles of illicit whiskey. Carroll sought suppression of the evidence, arguing the search without a warrant was in violation of the 4th Amendment.

ISSUE: May officers make a warrantless search of a vehicle in a public place if they have probable cause to believe it is or contains evidence of or instrumentalities of a crime?

HOLDING: Yes.

DISCUSSION: The Court held the situation was analogous to a warrantless search of a ship in harbor by customs officials. In such cases, customs agents had long been permitted to make warrantless searches of ships in harbor so long as they had probable cause to believe the ship was carrying contraband. The warrantless searches were permitted in such cases because the ship was mobile, and could leave port before the agents got back with a search warrant and would be therefore out of reach. Similarly, a vehicle is mobile, and if an officer had to go to the judge to get a warrant, it could be gone and out of the jurisdiction before the officer got back. The vehicle has to be in a public place, which is simply a location where the owner/operator of the vehicle has no reasonable expectation of

privacy. The Vehicle Exception Search requires the same probable cause that an officer would need to get a warrant. It is not a lower standard. An officer is allowed to do a complete search of the vehicle, interior, trunk, under the hood, everything and everywhere.

Illinois v. Caballes
543 U.S. 405 (2005)

FACTS: Caballes had been stopped for a traffic violation. There was no reasonable suspicion to believe that he was engaged in drug trafficking. A canine officer nearby heard the stop called in, and went over there on his own volition. He arrived while Caballes was still dealing with the officer who stopped him. The dog alerted on the vehicle, and a search revealed contraband.

ISSUE: Is a sniff by a drug canine, which reveals nothing but the presence of contraband, during a lawful stop a search?

HOLDING: No.

DISCUSSION: The Court held that there was no privacy interest in the air surrounding the vehicle. So long as the vehicle was lawfully stopped, there was not an issue. However, the Court also made it clear that, absent reasonable suspicion, an officer cannot compel a person to wait for the drug dog. Dragging out the stop to give a drug dog time to arrive would be an unlawful seizure, and any drugs found would be suppressed as a result.

Warden of Maryland Penitentiary v. Hayden, 387 U.S. 294, 87 S.Ct. 1642 (1967)

FACTS: About 8 a.m. on March 17, 1962, an armed robber entered the business premises of the Diamond Cab Company in Baltimore, Maryland. He took $363 and ran. Two cab drivers in the vicinity, attracted by the shouts of "hold-up", followed the man to 2111 Cocoa Lane. One driver notified the company dispatcher by radio that the man was a Negro about 5'8" tall, wearing a light cap and dark jacket, and that he had entered the house on Cocoa Lane. The dispatcher relayed the information to the police who were proceeding to the scene of the robbery. In less than five minutes, the police arrived at the house. An officer knocked and announced their presence. Mrs. Hayden answered the door, and the officers told her they believed that a robber had entered the house, and asked to search the house. She offered no objection. (The court held that the issue of consent by Mrs. Hayden for the entry need not be decided because the officers were justified in entering and searching for the felon, for his weapons and for the fruits of the robbery.)

The officers spread out through the first and second floors and the cellar in search of the robber. Hayden was found in an upstairs bedroom feigning sleep. He was arrested when officers on the first floor and in the cellar reported that no other man was in the house. Meanwhile, an officer was attracted to an adjoining bathroom by the noise of running water, and discovered a shotgun and a pistol in a flush tank; another officer, who was "searching the cellar for a man or the money" found in a washing machine a jacket and trousers of the type the fleeing man was said to have worn. A clip of ammunition for the pistol and a cap were found under the mattress of Hayden's bed, and ammunition for the shotgun was found in a bureau drawer in Hayden's room. All of these items were introduced against Hayden at his trial.

ISSUES:
1) Were the entry into the house and the search for the robber, without a warrant, legal?
2) Even if the search was lawful, was the seizure of the items

of clothing ("mere evidence") legal?

HOLDINGS: 1) Yes
2) Yes

DISCUSSION:
1) When police were informed that armed robbery had taken place and that a suspect had entered a certain house less than five minutes before they reached it, officers acted reasonably when they entered the house and began to search for the suspect and for weapons which he had used in robbery or which might be used against them.

The permissible scope of the search was as broad as reasonably necessary to prevent danger that suspect at large in house might resist or escape.

The Fourth Amendment does not require police to delay in course of investigation if to do so would gravely endanger their lives or the lives of others. Speed here was essential, and only a thorough search of the house for persons and weapons could have insured that Hayden was the only man present and that the police had control of all weapons that could be used against them or to effect escape.

2) Language of the Fourth Amendment does not support distinction between "mere evidence" and instrumentalities, fruits of crime, or contraband.

Terry v. Ohio, 392 U.S. 1 (1968)

FACTS: Cleveland Police Detective Martin McFadden had been a policeman for 39 years, a detective for 35 years, and had been assigned to his beat in downtown Cleveland for 30 years. At approximately 2:30 p.m. on October 31, 1963, Officer McFadden was patrolling in plain clothes. Two men, Chilton and Terry, standing on the corner of Huron Road and Euclid Avenue, attracted his attention. McFadden had never seen the men before and he was unable to say precisely what first drew his eye to them. His interest aroused, Officer McFadden watched the two men. He saw one of the men leave the other and walk past some stores. He paused and looked in a store window, then walked a short distance, turned around and walked back toward the corner, pausing once again to look in the same store window. Then the second man did the same. This same trip was repeated approximately a dozen times. At one point, a third man approached them and engaged them in conversation. This man then left. Chilton and Terry resumed their routine for another 10-12 minutes, then left to meet with the third man.

Officer McFadden testified that he suspected the men were "casing a job, a stick-up," and that he feared "they may have a gun." Officer McFadden approached the three men, identified himself and asked for their names to which the men "mumbled something." Officer McFadden grabbed Terry, spun him around and patted down the outside of his clothing. In the left breast pocket of Terry's overcoat, Officer McFadden felt a pistol, which he retrieved. Officer McFadden proceeded to pat down Chilton, felt and retrieved another revolver from his overcoat. Officer McFadden patted down the third man, Katz, but found no weapon. Chilton and Terry were charged with carrying concealed weapons. (Chilton died before his conviction could be appealed.) Both were convicted, and appealed, and the appellate courts affirmed the conviction. Upon appeal, the U.S. Supreme Court accepted certiorari.

ISSUES: 1) May an officer stop an individual briefly on reasonable suspicion that they are involved in illegal activity?

2) May an individual be frisked if the officer has reasonable suspicion that they are armed and present a danger?

HOLDINGS: 1) Yes
2) Yes

DISCUSSION: The Constitution forbids not all searches and seizures, but unreasonable searches and seizures. There is a "seizure" whenever police officer accosts an individual and restrains his freedom to walk away, and "search" when officer makes careful exploration of outer surfaces of person's clothing to attempt to find weapon.

> In justifying a particular intrusion, an officer must be able to point to specific and articulable facts which, taken together with rational inferences from those facts, that reasonably warrants that intrusion. Those facts must be judged against an objective standard of whether the facts available to officer at moment of seizure or search would warrant man of reasonable caution in belief that action taken was appropriate. Intrusions must be based on more than hunches. Simple good faith on the part of the officer is not enough.

A police officer who had observed persons go through series of acts, each of them perhaps innocent in itself, but when taken together warranted further investigation, was discharging legitimate investigative function when he decided to approach them. The officer in this case had reasonable cause to believe that defendants were contemplating a crime, and thus had cause to stop and speak to them. Because he suspected them of intent to commit armed robbery on the business, there was cause to believe they may be armed, thus the officer had cause to search them for weapons. McFadden did not exceed the reasonable scope of a proper search in patting down their outer clothing,

The sole justification for an officer's search of a person whom he has no cause to arrest is protection for officer and others nearby, and it must be confined in scope to intrusion reasonably designed to discover weapons. Although the facts of the Terry case involved a pat down of the outer clothing, the language of the court's decision did not limit a frisk to the outer clothing, such as a coat. The court said, "...it must be limited to that which is necessary for the discovery of weapons which might be used to harm the officer or others nearby. "The scope of the search must be strictly tied to and justified by the circumstances that rendered its initiation permissible."

The U.S. Supreme Court affirmed the decision.

See also: *U.S. v. Reed, 220 F.3d 476 (6th Cir. 2000)*
U.S. v. Harris, 192 F.3d 580 (6th Cir. 1999)
Pitman v. Com., 896 S.W.2d 19 (Ky.App., 1995)
Com. v. Banks, 68 S.W.3d 347 (Ky., 2001)
U.S. v. Mesa, 62 F.3d 159 (6th Cir. 1995) – Terry traffic stop
U.S. v. Freeman, 209 F.3d 464 (6th Cir. 2000) - Terry traffic stop
Adkins. v. Com., 96 S.W.3d 779 (Ky. 2003)

Ybarra v. Illinois
444 U.S. 85 (1979)

FACTS: Officers executed a search warrant at the Aurora Tap Tavern for controlled substances. The warrant specified that Greg the bartender could also be searched. When officers executed the warrant, they lined up everybody who was in the bar and patted them down. The officer who patted down Ybarra felt a cigarette pack in his pocket that felt as if

something other than cigarettes was in it. After patting down the others, he returned to Ybarra, and removed the cigarette pack from him. It contained heroin. Ybarra argued the officers had no right to frisk him in the first place, and wanted the evidence suppressed.

ISSUE: May officers do a precautionary frisk of persons who happen to be at the scene when a search warrant is served, absent any reasonable suspicion that the person may be armed and dangerous?

HOLDING: No.

DISCUSSION: The Court held that the mere fact of a person's presence at the scene of execution of a search warrant does not, without more, justify a *Terry* frisk. To do otherwise would be to do away with the requirement of an individualized reasonable suspicion that the person was armed and dangerous. Just as a search warrant does not give you the right to search everybody who happens to be there when officers arrive, neither does it justify a frisk.